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(1)

Supreme Court, U.S.
FILED
08-347 SEP 12 2008
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No.

IN THE

Supreme Court of the United States

RAYMOND & KORLISS SCHLAGEL
Petitioners

v.

BERLING DEVELOPMENT ENTERPRISES, ET AL
Respondents

On Petition For Writ of Certiorari
To The Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

RAYMOND & KORLISS SCHLAGEL
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

Pro se

QUESTIONS PRESENTED FOR REVIEW

1.) Whether the Constitution guarantees that the prevailing parties in a state civil proceeding shall have access to the trial court record and be able to obtain a copy of any document in the record?

2.) When a case is on appeal in a state court, does the Constitution guarantee that any party to the proceeding shall have access to and be able to copy any document of the trial court record in question?

3.) If the trial court record is requested by a party in an appeal to a state supreme court, does the Constitution guarantee that this appeal shall be reviewed upon the full record, including the certified record of the trial court?

4.) Whether the Constitution guarantees that the prevailing parties in a state civil proceeding shall have the right as members of the public to inspect and copy court documents?

PARTIES

Raymond Schlagel
Petitioner

Korliss Schlagel
Petitioner

Berling Development Enterprises / Berling Construction Company
Respondent

Former judge, Joseph Bamberger, Boone Circuit Court
Respondent

Judge Anthony Frohlich, Boone Circuit Court
Respondent

Diane Murray (Prindle), Boone Circuit Clerk
Respondent

Pat Gutzeit, Boone Circuit Clerk (former)
Respondent

Pat Scudder, Boone Deputy Clerk
Respondent

Rose Marie Grieve, Boone Deputy Clerk
Respondent

Sue Shields, Boone County Bookkeeping
Respondent

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PRIOR OPINIONS AND ORDERS

Review is sought for: 1) Order Denying Petition for Rehearing; 2) Memorandum Opinion of The Court denying Petitioners access to retrieve trial court documents; 3) Order denying reconsideration of Order denying Petitioners the trial court record; and 4) Order denying Petitioners the trial court record. They are reproduced in the Appendix at A-1-, A-2-, A-9- and A-10-.

JURISDICTION

The Supreme Court of Kentucky entered its Order Denying Rehearing on June 19, 2008, after it rendered its unpublished Opinion on November 1, 2007. The Court entered its Order denying reconsideration of Order of October 30, 2007 on November 30, 2007, and entered its Order denying the trial court record on October 30, 2007. Appendix at A-1-, A-2-, A-9- and A-10-.

Petitioners invoke this Court's jurisdiction under 28 U.S.C § 1257.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment, Section 1, of the United States Constitution in pertinent part provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Fifth Amendment of the United States Constitution in pertinent part provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

The Ninth Amendment of the United States Constitution in pertinent part provides:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The First Amendment of the United States Constitution in pertinent part provides for the public's right to court documents:

> ...the freedom of speech, or of the press...

STATEMENT OF THE CASE

Procedural History / Facts

Petitioners in May 1990, filed a suit against developer/builder Berling Construction, now Berling Development Enterprises (hereinafter "Berling"), in reference to a lot and a market

home they purchased from Berling. The suit filed in Boone County Circuit Court (case # 90-CI-0425) alleged over 26 building code violations, no certificate of occupancy, no foundations and footers under portions of the home, for performing later construction on Petitioner's property without obtaining permission/easements, and so on. Petitioners prevailed and a judgment was entered on August 20, 1996 in excess of $1.2 million (included was previously paid hourly attorney fees), where the developer was found liable for trespass, breach of warranty, violation of the Consumer Protection Act, misrepresentation, code violations, and so on. Presiding for this case was Judge Joseph F. Bamberger. Appendix at A-33-.

Berling, having assets and insurance to cover the judgment, posted a bond while they appealed. On December 30, 1998, the trial court judgment was affirmed. Prior to affirmation, Petitioners were denied the opportunity to execute on the judgment, as evident by the bond that was posted. Emphasis added. Appendix at A-37- to A-38-, ¶'s 5 and 12 thru 14.

Petitioners, after receiving the judgment, actively sought copies of the trial court record, including but not limited to a certified copy of the case history, and the bond. Petitioners knew that a bond had been filed and that it was needed to execute on the judgment, and that the case history records all of the proceedings in the action, including the filed papers, tangible exhibits, and a transcript of the trial. However, Petitioners were repeatedly denied their requests

to access and obtain copies of court documents, even though they paid the required fee more than once. Appendix at A-37-, ¶'s 8 and 9.

Instead of honoring Petitioners request the trial court, acting sua sponte, then redacted new court documents that stated that a bond does not exist, which were later used by the Supreme Court of Kentucky in their opinion. Appendix at A-2-. This was self-serving and came without any verification of the record (e.g. certified case history) and in contradiction with already known filed documents of the record, including the judgment. Appendix at A-33-.

On December 15, 2005, Petitioners filed a writ of mandamus, an original action, with the Kentucky Court of Appeals in an attempt to obtain the certified case history and bond. Appendix at A-23-. On March 03, 2006, the Court of Appeals denied Petitioners writ without the trial court record ever being certified and provided to the court, and while they acknowledged that the case history was never provided to the Petitioners. Appendix at A-13-.

On May 09, 2006, the Court of Appeals denied Petitioners motion to reconsider, even though they acknowledge that Appellants had never been provided a copy of the trial court case history. Appendix at A-11-.

Petitioners/Appellants on June 07, 2006, appealed the Court of Appeals decision to the Supreme Court of Kentucky and filed their brief on July 03, 2006, while serving all parties. Appendix A-21-. The Appellees filed their brief after the court's due date of September 01, 2006.

The Supreme Court of Kentucky on September 08, 2006, after recognizing the trial court record was never received by the appellate court and that it was a prerequisite in maintaining Appellants' constitutional rights and also necessary to resolve this appeal, requested the trial court record from the Boone County Circuit Court.

The trial court never did provide the record to the Supreme Court of Kentucky. Instead, the Boone Circuit Court, with a special assigned judge from the Supreme Court of Kentucky, had Petitioner/Appellant, Ray Schlagel, falsely arrested on December 27, 2006, in a simulated Boone Circuit Civil Case (#04-CI-1875). The trial court attempted to coerce Petitioners to drop their appeal to the Supreme Court and for Ray to sign off on fraudulent legal fee documents. Ray was never charged with a crime. He was held and not released until 93 days later, March 30, 2007. Appendix at A-24-.

On October 15, 2007, Petitioners filed a motion for the Supreme Court to obtain the trial court record for the appeal. Appendix at A-17-. No response was filed in opposition.

On October 30, 2007, the court denied Petitioners their motion to have the trial court record presented for their appeal. Appendix at A-10-. On November 01, 2007, the court denied Petitioners appeal while at the same time not addressing Petitioners request for the case history. Appendix A-2-.

Petitioners' motion to reconsider Order of October 30, 2007, was denied and entered on

November 30, 2007. Appendix A-9-. Petitioners' petition for rehearing, filed November 21, 2007, was denied and entered on June 19, 2008. Appendix at A-22- and A-1-.

In summary, the Boone Circuit Court, the Kentucky Court of Appeals, and the Supreme Court of Kentucky, all have denied Petitioners their right, as parties, to court documents and the trial court record. Never was the record for Boone Circuit case # 90-CI-0425 certified and made available for examination or to be copied by the Petitioners during the reviews carried out by the Kentucky Court of Appeals and the Supreme Court of Kentucky.

All of the Supreme Court of Kentucky's decisions were made when the court was cognizant of previous improper conduct within the Boone Circuit Court. Of critical nature are the previous actions of the trial court judges. They are Judge Joseph Bamberger and Judge Anthony Frohlich, Respondents in this petition.

Judge Joseph Bamberger on February 27, 2006, was reprimanded by the Judicial Conduct Commission for helping himself and others to roughly 67% of a $200 million settlement he presided over, while shielding all pertinent documents from the parties and the public. Emphasis added. Judge Frohlich was the Master Commissioner at that same time and was originally appointed by Judge Bamberger, whom Judge Frohlich has now replaced. When acting as Master Commissioner, Honorable Frohlich was assigned by Judge Bamberger to attempt to have Petitioners sell their house back to the builder,

while denying Petitioners their inviolate right to a jury trial. Petitioners refused and eventually obtained a jury trial. Kentucky Circuit Courts often use the Master Commissioner for judicial sales, including the execution of court judgments. Similar to the $200 million Fen-Phen scandal, all pertinent documents have been kept from appellants by Judge Bamberger and Judge Frohlich. Emphasis added. Appendix at A-36- and A-38- to A-39-, ¶ 15.

Argument

This writ is of imperative public importance as it addresses some of the most sacred and universal rights of a party to a proceeding within the United States. They are the inviolate rights of a party to a proceeding to have access to the full record, to be able to obtain from the records of the court a copy of any document, and for an appeal to be reviewed upon the record (e.g. a record certified by the lower court). The courts of Kentucky by denying Petitioners the trial court record and/or court documents have exercised their inherent powers in a way that conflicts with constitutional or statutory provisions. The final opinion and the orders of the Supreme Court of Kentucky are repugnant to the Constitution and to the rights of the Petitioners claimed under the Constitution.

Petitioners, as parties to an action, have been denied their inherent right to the record and court documents that even the public (e.g.

including the press) has the right to obtain. The Petitioners are also members of the public.

Petitioners, who suffered numerous wrongs, prevailed in a state civil action in August, 1996, to help correct those wrongs. Yet, more harm, including irreparable harm, has occurred to Petitioners when they sought to collect on their judgment (e.g. obtain the case history and bond). The Supreme Court of Kentucky by not allowing the record has denied Petitioners their just right to collect.

In summary, the Petitioners seek the same equal rights as provided to all U.S. citizens as guaranteed and protected by the Constitution.

CONCLUSION

This case accordingly merits this Court's immediate review.

For the foregoing reasons the petition for a writ of certiorari should be granted.

Respectfully Submitted,

Raymond Schlagel & Korliss Schlagel

Raymond & Korliss. Schlagel
Petitioners, *pro se*
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

Supreme Court of Kentucky

2006-SC-000430-MR

RAYMOND SCHLAGEL and
KORLISS SCHLAGEL APPELLANTS

ON APPEAL FROM COURT OF APPEALS
CASE NUMBER 2005-CA-002561
BOONE CIRCUIT COURT NO. 90-CI-000425

V.

HON. ANTHONY W. FROHLICH, JUDGE,
BOONE CIRCUIT COURT, and
BERLING DEVELOPMENT ENTERPRISES/
BERLING CONSTRUCTION COMPANY,
Real Party In Interest, ET AL.
APPELLEES

ORDER DENYING PETITION FOR REHEARING

The petition for rehearing is denied.
All concur, except Schroder, J., not sitting.

ENTERED: June 19, 2008.

s/Joseph E. Lambert
CHIEF JUSTICE

RENDERED: NOVEMBER 1, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2006-SC-000430-MR

RAYMOND SCHLAGEL AND
KORLISS SCHLAGEL APPELLANTS

ON APPEAL FROM COURT OF APPEALS
V. CASE NUMBER 2005-CA-002561
BOONE CIRCUIT COURT NO. 90-CI-000425

HON. ANTHONY W. FROHLICH, JUDGE,
BOONE CIRCUIT COURT, AND
BERLING DEVELOPMENT ENTERPRISES/
BERLING CONSTRUCTION COMPANY,
REAL PARTY IN INTEREST, ET AL.
APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This is a matter of right appeal from an original action in the Court of Appeals. In that action, the Appellants, Raymond and Korliss Schlagel (hereinafter, "the Schlagels") sought relief from an order of the Boone Circuit Court denying their motion to compel the Boone Circuit Clerk to produce a copy of a supersedeas bond allegedly filed in a prior matter. The Court of Appeals denied the Schlagel's petition for a writ

of mandamus. Upon review, we affirm the decision of the Court of Appeals.

In May of 1990, the Schlagels filed suit against the real party in interest herein, Berling Development Enterprises (formerly Berling Construction Company and hereinafter, "Berling"). The suit alleged, inter alia, breach of warranty, misrepresentation, and violations of the Kentucky Consumer Protection Act arising out of Berling's construction of a private residence for the Schlagels. Following a jury trial, the Schlagels were awarded both compensatory and punitive damages for a total final judgment of $1,140,000.[1] The Court of Appeals affirmed the judgment in an unpublished opinion.[2]

According to the Schlagels, Berling posted a supersedeas bond to cover the judgment during the pendency of the direct appeal to the Court of Appeals. Since the conclusion of the appeal of the original action, the Schlagels claim that they have sought unsuccessfully to obtain a copy of the supersedeas bond and a certified copy of the case history. While they did receive a certified letter from the Boone Circuit Court Clerk's office purporting to contain a certified copy of the case

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[1] The judgment of the Boone Circuit Court was dated August 9, 1996.

[2] See Berling Construction Company v. Schlagel, 1996-CA-003222-MR. Berling later sued its attorney in that litigation, James Woltermann, for legal malpractice. In a series of partial summary judgments, all claims were resolved in favor of Woltermann. The Court of Appeals later affirmed that judgment in an unpublished opinion. See Berling Development Enterprises, Inc. v. Woltermann, 2004 WL 1175749.

history, the Schlagels claim that such letter contained neither a certified copy of the case history nor a copy of the bond.

Thereafter, the Schlagels moved the Boone Circuit Court to compel production of the supersedeas bond. In an order entered June 1, 2005, the Appellee herein, Judge Anthony W. Frohlich, found that Berling had never posted a supersedeas bond. In the order, Judge Frohlich noted that an order of non-wage garnishment and a writ of execution were obtained by the Schlagels against Berling in an attempt to collect on the judgment while Berling appealed the original judgment. Judge Frohlich correctly explained that the Schlagels were permitted to "engage in these efforts because [Berling] did not supersede the judgment by posting a bond."

As further evidence that a supersedeas bond was not posted, Judge Frohlich referred to a pleading filed by the Schlagels in the Boone Circuit Court in April of 1997, a year after the original judgment. In that pleading, counsel for the Schlagels asserted that "[Berling] has never put up a supersedeas bond in this action and it is the [Schlagels'] intention to begin levying and foreclosing on the property of Berling Construction's successor company." By subsequent order dated June 6, 1997, the Boone Circuit Court allowed such execution by stating that "execution may now issue forthwith against Berling Development Enterprises, Inc."

Though finding no evidence of a bond, Judge Frohlich, out of an abundance of caution, sua sponte ordered a hearing on this issue. Berling's

counsel Stephen Wolnitzek, appeared and acknowledged in open court that his client had never posted a supersedeas bond.

Finally, Judge Frohlich noted that "the Court has examined the Court files and Court Calendar and finds no evidence that [Berling] ever filed a supersedeas bond. In fact, the [Schlagels'] efforts throughout this case in using the processes of this Court to obtain payment of their Judgment indicate that [their] collection efforts were not ever superseded." Accordingly, having found no evidence of a bond, the Schlagels' motion to compel the Boone Circuit Court to produce such bond was denied.

Thereafter, the Schlagels petitioned the Court of Appeals for a writ of mandamus directing Judge Frohlich to provide them with a copy of the supersedeas bond and the case history. In that petition, the Schlagels asserted that the bond is known to exist, but that it has been withheld from them. Furthermore, they argue that, by denying them a certified copy of the case history, they are being deprived of the record they need for their appeal.

The petition was denied. Explaining that a writ of mandamus is an appropriate remedy only when a trial court is refusing or neglecting to carry out its duties, the Court of Appeals determined that Judge Frohlich had fully adjudicated the matter by his June 1, 2005 order. Furthermore, the Court of Appeals noted that the Schlagels presented no additional evidence that would demonstrate that Judge Frohlich's findings or order was in error.

The Schlagels appealed the denial of the writ to this Court. Upon review, we agree with the Court of Appeals that a writ of mandamus is not warranted in this instance.

A writ is an extraordinary remedy that is granted conservatively, and only in exceptional cases. See Haight v. Williamson, 833 S.W.2d 821, 823 (Ky. 1992). Accordingly, it is granted for only two reasons: (1) where the lower court is acting beyond its jurisdiction; and (2) where the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice or irreparable injury will result if the petition is not granted. Newell Enterprises, Inc. v. Bowling, 158 S.W.3d 750, 754 (Ky. 2005). The requirements that no adequate remedy exists by appeal and that irreparable injury will result are absolute prerequisites to the issuance of a writ. Bender v. Eaton, 343 S.W.2d 799, 801 (Ky. 1961). On appeal, the basic standard of review is for an abuse of discretion, though questions of law are reviewed de novo. Newell, 158 S.W.3d at 754.

Here, the Schlagels have failed to demonstrate that the lower court has acted beyond its jurisdiction. Furthermore, Judge Frohlich's June 1, 2005 order is a final and appealable order. Furthermore, the Schlagels have failed to demonstrate that no adequate remedy exists by direct appeal of that order. Accordingly, the requirements of the extraordinary remedy of a writ of mandamus have not been met in this case.

For the foregoing reasons, the decision of the Court of Appeals denying the petition for a writ of mandamus is hereby affirmed.

All concur except Schroder, J., not sitting.

APPELLANTS:

Raymond Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042

Korliss Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042

COUNSEL FOR APPELLEES:
Stuart W. Cobb
Assistant Attorney General
Civil & Environmental Law Division
Office of the Attorney General
P.O. Box 2000
Frankfort, KY 40602-2000

Hon. Anthony W. Frohlich
Boone County Justice Center
6025 Rogers Lane
Suite 444
Burlington, KY 41005

Joseph F. Bamberger
1598 Shady Cove
Florence, KY 41042

COUNSEL FOR REAL PARTY IN INTEREST, BERLING DEVELOPMENT ENTERPRISES:

Stephen D. Wolnitzek
Matthew Beatty Demarcus
WOLNITZEK & ROWEKAMP, PSC
502 Greenup Street
P.O. Box 352
Covington, KY 41012-0352

Supreme Court of Kentucky

2006-SC-000430-MR

RAYMOND SCHLAGEL, ET AL. APPELLANTS

ON APPEAL FROM COURT OF APPEALS
V. NO. 2005-CA-002561
BOONE CIRCUIT COURT NO. 90-CI-000425

HON. ANTHONY FROHLICH, JUDGE,
BOONE CIRCUIT COURT, ET AL. APPELLEES

ORDER

Appellant's motion to hear motion for reconsideration from this Court's order of October 30, 2007 and for correction to the same is denied.

ENTERED: November 30, 2007.

s/Joseph E. Lambert
Chief Justice

Supreme Court of Kentucky

2006-SC-000430-MR

RAYMOND SCHLAGEL, ET AL. APPELLANTS

ON APPEAL FROM COURT OF APPEALS
V. NO. 2005-CA-002561
BOONE CIRCUIT COURT NO. 90-CI-000425

HON. JOSEPH BAMBERGER, JUDGE,
BOONE CIRCUIT COURT, ET AL. APPELLEES

ORDER

Appellants' motion for reconsideration of this Court's order of October 8, 2007, is denied.

Appellants' motion for the Supreme Court to obtain the trial court record, is denied.

Appellants "motion for the Supreme Court to sanction appellees for having appellant falsely arrested in an attempt to silence appellants and to coerce them into dropping this herein appeal", is denied.

All concur, except Schroder, J., not sitting.

ENTERED: October 30, 2007.

s/Joseph E. Lambert
Chief Justice

Commonwealth of Kentucky

Court of Appeals

No. 2005-CA-002561-OA

RAYMOND SCHLAGEL, ET AL. PETITIONERS

ORIGINAL ACTION
REGARDING BOONE CIRCUIT COURT
V. ACTION NO. 90-CI-00425

HON. ANTHONY W. FROHLICH, JUDGE,
BOONE CIRCUIT COURT, ET AL.
RESPONDENTS

AND

BERLING DEVELOPMENT ENTERPRISES/
BERLING CONSTRUCTION COMPANY
REAL PARTY IN INTEREST

ORDER

** ** ** ** ** ** ** **

BEFORE: McANULTY, SCHRODER, AND VANMETER, JUDGES.

The Court has considered petitioners' motion to reconsider this Court's order of March 3, 2006, denying their petition for writ of mandamus, to which no response was filed, and ORDERS that the motion be DENIED.

However, in the interest of facilitating the progress of petitioners' efforts at collecting on the

judgment, the Boone Circuit Court Clerk is hereby DIRECTED to promptly provide to petitioners a certified copy of the entire case history of Boone Circuit Court, Action No. 90-CI-00425, beginning with the filing of the complaint in 1990, and up to the date of entry of this order.

The Clerk of this Court is DIRECTED to send a copy of this order to the Boone Circuit Court Clerk.

ENTERED: MAY 9 2006

s/William E. McAnulty, Jr.
JUDGE, COURT OF APPEALS

COMMONWEALTH OF KENTUCKY

Court of Appeals

NO. 2005-CA-002561-OA

RAYMOND SCHLAGEL; ET AL. PETITIONERS

ORIGINAL ACTION
REGARDING BOONE CIRCUIT COURT
v. ACTION NO. 90-CI-000425

HON. ANTHONY W. FROHLICH, JUDGE,
BOONE CIRCUIT COURT; ET AL.
RESPONDENTS

AND

BERLING DEVELOPMENT ENTERPRISES/
BERLING CONSTRUCTION COMPANY
REAL PARTY IN INTEREST

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

** ** ** ** ** ** ** **

BEFORE: McANULTY, SCHRODER AND VANMETER, JUDGES.

This matter is before the Court on a petition for writ of mandamus to which the respondents and the real party in interest responded. Also pending before the Court are petitioners' motion

for leave to file a reply and motion to strike response filed on December 22, 2005.

It is ORDERED that petitioners' motion for leave to file a reply be GRANTED. The tendered reply is ORDERED FILED and was considered by the Court. Petitioners' motion to strike response is DENIED. There was only one response filed on December 22, 2005, and that response was filed by attorney Stuart W. Cobb on behalf of respondents. The entry referred to by petitioners regarding a second response filed on the same day on behalf of the real party in interest is a clerical error. The only response made on behalf of the real party in interest was filed on December 28, 2005.

In this original action, petitioners ask that respondents be ordered to provide them with a copy of a supersedeas bond and a certified copy of the case history. They assert that, since the conclusion of the appeal taken by the real party in interest from the judgment in the action, they have unsuccessfully sought to obtain those documents. They also contend that a bond is known to exist but that it is being withheld from them, thereby preventing them from executing on the judgment. Further, they argue that, by denying them a certified copy of the case history, respondents are depriving them of the certified record that they need for their appeal.

Respondents argue in response that the matter relating to the supersedeas bond was settled by an order entered on June 1, 2005, denying petitioners' motion to compel the circuit court clerk to produce a bond to them. The Court

notes that the order stated that counsel for the real party in interest had "acknowledged in open court that his client never posted a supersedeas bond" and that the court concluded that "the Judgment in this case was not superseded, no bond is shown to have been filed or approved . . . ." As to the case history, respondents assert that a copy of it was sent to petitioners on December 21, 2005, an assertion that the latter challenge in their reply.

A writ of mandamus is an appropriate remedy when a petitioner is able to show that a trial court has refused of neglected to carry out its duty to act, but it is not necessarily the remedy to use in order to compel a trial court, which has acted, to act in some other way.[1] In this case, the trial court did not refuse or neglect to decide whether a supersedeas bond was posted. The matter was adjudicated by the order of June 1, 2005, and petitioners do not assist our review with any evidence of record that would demonstrate that the decision is in error. So far as the case history is concerned, the record that is provided to us suggests that petitioners never formally moved the trial court, in accordance with the requirements of CR 7.02(1), to order the circuit court clerk to send them a certified copy of that document. We believe that this would be their remedy if they have yet to receive it.

Therefore, it is hereby ORDERED that this petition be DENIED.

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[1] See, e.g., O'Bannon v. Aetna Casualty & Surety Co., 678 S.W.2d 390, 392 (Ky. 1984).

ENTERED: MAR 3 2006

s/William E. McAnulty, Jr.
JUDGE, COURT OF APPEALS

Filed
OCT 15 2007
SUPREME COURT CLERK

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2006-SC-000430

RAYMOND and KORLISS SCHLAGEL
APPELLANTS

vs.

JUDGES A. W. FROHLICH and JOSEPH F. BAMBERGER (Boone Circuit Judges)
APPELLEES

PAT GUTZEIT, DIANE MURRAY (PRINDLE), PAT SCUDDER, ROSE MARIE GRIEVE, and SUE SHIELDS, (Boone Circuit Clerk's Office)

and

REAL PARTY IN INTEREST:

BERLING DEVELOPMENT ENTERPRISES/BERLING CONSTRUCTION CO.

APPEAL FROM THE COURT OF APPEALS
NO. 2005-CA-02561

APPELLANTS' MOTION FOR THE SUPREME COURT TO OBTAIN THE TRIAL COURT RECORD

Now come the Appellants and move this court to obtain the trial court record.

Argument

The record in this herein appeal shows that the trial court record was requested of Boone County Circuit Court on September 8, 2006. At this time, no due date was given to the Circuit Court. The record is also very clear that the Circuit Court has not provided the record to this Court as required, and it is now over thirteen months later.

All court records and court documents, pursuant to KRS 26A.200 "are subject to the control of the Supreme Court". Pursuant to KRS 26A.220 "All public officers;..., other persons having custody, control, or possession of court records... shall be subject to the direction of the Supreme Court." KRS 26A.200 (2) states:

> The Supreme Court shall determine which records were generated, made, or received by or for any court.

The Boone County Circuit Court has blatantly "thumbed their noses" at the Kentucky Supreme Court and still has not provided the record as requested. This same record has also been denied the Appellants by the

Boone County Circuit Court and is the issue of this herein case. Documents sought by Appellants include the case history and the bond.

For the aforementioned reasons the Appellants move the Court to immediately require the Boone County Circuit Court to file a certified trial court record with this Court. Appellants further move the Court to issue a due date of less than ten days.

Submitted by:
s/Raymond Schlagel & Korliss Schlagel

Raymond Schlagel & Korliss Schlagel
64 W. Cobblestone Ct.
Florence, KY 41042
(859) 594-4103

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of this Motion was served upon the following individuals by U.S. mail on this 12 day of October, 2007:

Stephen Wolnitzek & Matthew DeMarcus
Wolnitzek & Rowekamp, P.S.C.
502 Greenup Street
Covington, KY 41012-0352
(two separate letters)

Stuart W. Cobb, Assistant Attorney General
Office of the Attorney General
Office of Civil and Environmental Law
700 Capitol Ave., Ste. 118
Frankfort, KY 40601

s/Raymond Schlagel & Korliss Schlagel

Raymond Schlagel & Korliss Schlagel

Excerpted from page 1 of Petitioners' Brief to Supreme Court of Kentucky

I. Introduction

Raymond and Korliss Schlagel seek an order directing Judge Anthony W. Frohlich, Judge Joseph F. Bamberger, and Pat Gutzeit/Diane Murray/etc. of the Boone County Circuit Clerk's office to immediately provide to appellants a certified copy of the case history and a copy of the filed bond for Trial Court case No. 90-CI-425. This case presents the issue of whether a prevailing party can be denied access to court records, and court documents, including the case history and the bond.

II. Statement Concerning Oral Argument

A party's right to the record is inviolate and is fundamental to every action in the United States. Because the issues are so basic, no oral argument is needed.

III. Statement of the Case

In May 1990, ...

Excerpted from page 3 of Petitioners' Petition for Rehearing to Supreme Court of Kentucky

I. Introduction

This is a petition in which the plaintiffs, the prevailing party in a civil case, have been denied their inviolate United States and Kentucky Constitutional rights to access to the trial court record, specifically the case history and the bond needed to execute on the plaintiff's judgment.

II. Statement Concerning Oral Argument

A party's right to the record is an inviolate right of both the United States and Kentucky Constitutions to every action in the United States and Kentucky. Because the Constitutions guarantee this right, no oral argument is needed.

III. Statement of the Case

In May 1990, ...

Excerpted from page 6 of Petitioners' Petition for Writ of Mandamus to Commonwealth of Kentucky Court of Appeals

Prayer

Plaintiffs's prayer is that the Boone County Circuit Court Judge Anthony W. Frohlich, Former Boone County Circuit Court Judge Joseph F. Bamberger, and Boone County Circuit Clerk's office (Pat Gutzeit, Diane Prindle Murray, Pat Scudder, Rose Marie Grieve, and Sue Shields) be promptly ordered to immediately provide to Plaintiffs a copy of the bond, notice per CR 62.03, and a certified copy of the full case history, all per Case # 90-CI-0425.

Affidavits of Raymond and Korliss Schlagel, without attachments, excerpted from Motion to Supreme Court of Kentucky, "Appellants' Motion For The Supreme Court to Sanction Appellees for Having Appellant Falsely Arrested in an Attempt to Silence Appellants and to Coerce them into Dropping This Herein Appeal", Filed October 15, 2007

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2006-SC-000430

RAYMOND and KORLISS SCHLAGEL
APPELLANTS

vs.

JUDGE ANTHONY W. FROHLICH, AND ET AL.
APPELLEES

AFFIDAVIT OF RAYMOND SCHLAGEL: FALSE ARREST ORCHESTRATED BY BOONE COUNTY CIRCUIT COURT

Raymond Schlagel being first duly cautioned and sworn states as follows:

1. My name is Raymond Schlagel. I am one of: a) the plaintiffs, the prevailing parties, in Boone County Circuit Court Case No. 90-CI-0425; b) the petitioners in Court of Appeals Case No.

2005-CA-002561; and c) the appellants in Supreme Court Case No. 2006-SC-000430.

2. On December 27, 2006, I was arrested and jailed pursuant to an arrest warrant issued in Boone County Circuit Court civil case No. 04-CI-01875. The presiding judge was, and still is, Judge Anthony Frohlich. Senior Judge Kevin Horne signed the warrant. No specific charges were listed on the warrant. Attached to this affidavit is a true and correct copy of the arrest warrant (1 page), and of an order signed by Judge Horne when fraudulently presented as signed by Judge Frohlich (1 page).

3. On January 02, 2007, a simulated arraignment was held, with Appellee, Diane Prindle, acting as court clerk.

4. Throughout my stay in jail, and until my release 93 days later on March 30, 2007, I was never charged with any crimes.

5. Because I was in the Boone County Detention Center (or Jail), I had not received the Orders of February 16, 2007, and February 21, 2007. I did not receive them until September 17, 2007, upon my request to the Kentucky Supreme Court Clerk.

6. I was held in jail by the Boone County Circuit Court system in a blatant attempt to get me to drop Kentucky Supreme Court case # 2006-SC-00430 and to persuade me to accept fraudulent legal fee documents filed by Tobias, Kraus, & Torchia, pursuant to pending U.S. Court of Appeals for the Sixth Circuit, case No. 04-3838. An example of this can be seen per my final hearing of February 20, 2007, where the

Boone County Circuit Court requested that I relinquish control of Boone County Civil Case # 90-CI-425 to a collection attorney, while dropping the pending Supreme Court case. Because I declined to do so, Judge Horne stated that I would be held in jail indefinitely until I changed my mind.

7. Supreme Court case # 2006-SC-00430 deals with Boone County Circuit Court case # 90-CI-425 in which I and my wife are Plaintiffs and have won a $1.2 million judgment in 1996 (now worth $4-$5 million), which the herein Appellees have deliberately thwarted all our attempts to collect by denying us court records, including the filed bond.

8. After my arrest, I was held in Boone County Jail (Detention Center) by Jailer Edward Prindle. During my jail time the Boone County jail web site had Edward Prindle's wife listed as Diane (attached is true copy – 1pg). Diane Prindle (Murray) is Boone County Circuit Clerk and is an Appellee in KY Supreme Court case No. 2006-SC-0430.

9. In a hearing on January 09, 2007 in Boone Circuit Court, after I declined to do as Judge Horne requested, I was physically hit by the bailiff in front of Judge Horne.

10. Due to the actions of the Kentucky judicial system to falsely arrest me, and the numerous explicit warnings from those advised of our situation, I and others are concerned about my physical safety.

11. Further, the affiant sayeth not.

s/Raymond L. Schlagel
Raymond Schlagel

25Sep07
Date

State of Kentucky)
)
County of Boone)

On this 25th day of September, 2007, before me a Notary Public in and for said County, personally appeared Raymond Schlagel, and who being known to me and having executed this Affidavit in my presence, stated that for genuine issue as to material fact made this affidavit.

Laura T Blair
Notary Public
My Commission Expires:May 18, 2011

Official Seal
Laura T. Blair
Notary Public – Kentucky
STATE-AT-LARGE
My Comm. Expires May 18, 2011

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2006-SC-000430

RAYMOND and KORLISS SCHLAGEL
APPELLANTS

vs.

JUDGE ANTHONY W. FROHLICH, AND ET AL.
APPELLEES

AFFIDAVIT OF KORLISS SCHLAGEL: FALSE ARREST OF MY HUSBAND ORCHESTRATED BY BOONE COUNTY CIRCUIT COURT

Korliss Schlagel being first duly cautioned and sworn states as follows:

1. My name is Korliss Schlagel. I am one of: a) the plaintiffs, the prevailing parties, in Boone County Circuit Court Case No. 90-CI-0425; b) the petitioners in Court of Appeals Case No. 2005-CA-002561; and c) the appellants in Supreme Court Case No. 2006-SC-00430. The other plaintiff, petitioner, and appellant in the same cases is my husband Raymond Schlagel.

2. On December 27, 2006, my husband was arrested and jailed pursuant to an arrest warrant issued in Boone County Circuit Court civil case No. 04-CI-01875, a simulated case. Senior Judge

Kevin Horne signed the warrant. No specific criminal charges were listed on the warrant. I am not a party per the same civil case (No. 04-CI-01875) in which my husband was arrested.

3. On January 02, 2007, I attended a simulated arraignment for my husband where Appellee, Diane Prindle (Murray), was acting as court clerk. At this time there was no prosecuting attorney present and my husband was not charged with any crimes.

4. After my husband's arrest on December 27, 2006, he was held in the Boone County Jail by Jailer Ed Prindle. My husband was in the Boone County Jail when the Kentucky Supreme Court Orders of February 16, 2007, and February 21, 2007, were issued and he was not released from jail until March 30, 2007. During his time in jail I was extremely concerned about his and our family's safety.

5. I attended all the hearings held by the Boone County Circuit Court for my husband's arrest per Boone Civil case # 04-CI-1875. At each hearing there was never a prosecuting attorney, my husband was never charged with a crime, and present was Ohio attorney David Kammer, the plaintiff in this civil case who was representing his firm although he is not a member of the Kentucky Bar Association.

6. My husband was held in jail by the Boone County Circuit Court system in a blatant attempt to coerce him and me to drop Kentucky Supreme Court case # 2006-SC-00430 and to force me to get him to accept fraudulent legal fee documents filed by Tobias, Kraus, & Torchia,

pursuant to pending U.S. Court of Appeals for the Sixth Circuit, case No. 04-3838. An example of this can be seen per my husband's final hearing of February 20, 2007, where the Boone County Circuit Court requested that Ray relinquish control of Boone County Civil Case # 90-CI-425 to a collection attorney, while dropping the pending Supreme Court case. Because he declined to do so, Judge Horne stated that Ray would be held in jail indefinitely until Ray changed his mind. Further, although I am not a party in Boone civil case # 04-CI-1875, David Kammer used Ray's jailing to inappropriately approach me at different times at the Boone County Circuit Court, while requesting repeatedly that I call him personally. His intent was clear; he wanted me to coerce Ray into what he and the court desired. He purposely and inappropriately came after me and put me under extreme pressure with what I believe were threats.

7. In an attempt to obtain my husband's release from jail, I presented assets to the clerk's office to cover the bond amount of $50,000. However, the Boone County Court denied my attempts. When Ray was in jail, the full bond amount was available either by cash or property. It was obvious to me that Boone County Circuit Court wanted to keep Ray in jail, not for any crimes committed, but for an alternative reason.

8. Supreme Court case # 2006-SC-00430 deals with Boone County Circuit Court case # 90-CI-425 in which I and my husband are Plaintiffs and have won a $1.2 million judgment in 1996 (now worth $4-$5 million), which the herein

Appellees have deliberately thwarted all our attempts to collect by denying us court records, including the filed bond.

9. I believe that my husband's and my safety were extremely threatened by the actions taken by Judge Horne, Judge Frohlich, attorney David Kammer, and the Boone Circuit Clerk's office to falsely arrest my husband and hold him in Boone County jail minus any charges. Because of their blatant and extreme actions I am still deeply concerned for Ray's and my family's safety.

10. Further, the affiant sayeth not.

s/Korliss M. Schlagel
Korliss Schlagel

10/04/07
Date

STATE OF KENTUCKY)
)
COUNTY OF BOONE)

On this 4th day of October, 2007, before me a Notary Public in and for said County, personally appeared Korliss Schlagel, and who being known to me and having executed this Affidavit in my presence, stated that for genuine issue as to material fact made this affidavit.

s/Laura T Blair
Notary Public
My Commission Expires: May 18, 2011

Official Seal
LAURA T. BLAIR
Notary Public – Kentucky
STATE-AT-LARGE
My Comm. Expires May 18, 2011

ENTERED
8-20-96
PAT GUTZEIT, CLERK
BOONE CIRCUIT/DISTRICT COURTS
s/ DP D.C.

COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CASE NO. 90-CI-00425

RAYMOND SCHLAGEL, ET AL PLAINTIFFS

VS **JUDGMENT**

BERLING CONSTRUCTION CO., ET AL
DEFENDANTS

This action coming on for trial on July 15, 1996 and proof being heard; at the close of the Plaintiffs' case, the Court sustained Motions for Directed Verdict by the Defendants, Clendenin Realty, Inc., and Whalen Builders, and the jury rendering a verdict, which is made a part hereof by reference, for the Plaintiffs against the Defendant, Berling Construction Company, for $1,196,000.00, and the Plaintiffs' motion for attorney fees pursuant to KRS 367.220 and KRS 198 B. 130 being considered, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. All claims of the Plaintiffs against the Defendants, Clendenin Realty, Inc., and Whalen Builders are hereby dismissed with prejudice.

2. The Plaintiffs shall recover from the Defendant, Berling Construction Company, the

sum of $1,196,000.00 plus attorney fees of $ s/ 28,494., 2x plus 12% interest per annum until paid, and costs, for all of which execution may issue.

3. This is a final and appealable Order; there is no just cause for delay.

s/ J F Bamberger
JUDGE
DATE: 8-9-96

s/Have Seen:
s/H. Douglas Rouse

CERTIFICATE

I certify I mailed a copy hereof to all attorneys of record on 26 day of JULY, 1996.

s/ Bert M. Edwards
BERT M. EDWARDS
Attorney for Plaintiffs
119 S. 7th St., #200
Louisville, KY 40202
584-8146

s/ Have Seen:
s/ H. Douglas Rouse
attorney for Whalen
(no objection)

CERTIFICATE

I, PAT GUTZEIT, Clerk of the Boone District/Circuit Court, hereby certify that I have mailed a copy of the foregoing order and notice to all parties hereto at their last known addresses or their counsel of record this 20 day of Aug, 19 96.

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
_____s/DP_____D.C

NOTICE

All parties will take notice that this order was entered in office of the Boone District/Circuit Clerk on the 20 day of Aug, 19 96.

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
_____s/DP_____D.C.

Excerpted from page 11 of Petitioner's Brief to Supreme Court of Kentucky

....

Judge Joseph F. Bamberger on February 27, 2006 was reprimanded by the Judicial Conduct Commission for helping himself and others to roughly 67% of a $200 million settlement he presided over, while in effect sealing all pertinent documents from the parties and the public. Allegations of Judge Bamberger could easily consist of "injustice, incompetence, perjury, and fraud". Further, it is believed that Judge Bamberger did not start with the $200 million settlement, or that the activities went unnoticed within the circuit clerk's office. It is evident that the ongoing withholding of similar court documents from appellants is a similar situation.

....

Excerpted from Petitioners' (Raymond and Korliss' Affidavit) taken from Petitioner's Brief, Appendix, Exhibit D, paragraphs 5, 8, 9, 12, 13, 14 and 15

.....

5. While on appeal we, the prevailing parties, were not permitted by Judge Joseph Bamberger to submit to the Trial Court any post judgment asset transfers by Berling, and that we not execute on the judgment, as a bond was posted.

.....

8. To date, we have not received the bond, and the certified copy of the full case history, of which several payments (over several years) have already been made. Also, other requested documents have not been provided.

9. During one visit, we were threatened by Diane Prindle Murray not to ever return to the Circuit Clerk's office again to request any records.

.....

12. We were advised by : a) an attorney with the state insurance commission, b) the Federal Bureau of Investigation, c) attorneys recommended by congressmen, d) attorney recommended by an investigative news media, e) Eric Deters, an attorney of Berling, and, f) numerous other attorneys that a bond was posted. No waiver of the bond exists.

13. We are aware that James Wolterman, trial attorney for Berling, was working directly with Berling's insurance companies, and that per Kentucky case law, the insurers are required to post a bond during appeal on behalf of the client.

14.) We were informed by the insurance agent for Berling Construction/Berling Homes/Berling Dev./ etc. that there was coverage and that if the appeal was upheld, the judgment would be paid by the insurance. This occurred in a meeting between us and Mille Stoeckle on June 25, 1998 at the office of Roeding Group Co. Insurance. Millie Stoeckle stated the same after talking to Brian Wilcox of Cigna (now Ace). She even gave us his phone # at that time (1-800-643-0408, 1-6948).

15) Below are some other concerning facts:

a) Judge Joseph F. Bamberger, who presided over our trial case, resigned amidst allegations of improper conduct in another civil suit. It has also been shown where Mr. Bamberger, while presiding over a large class action case, helped himself to plaintiff's settlement while setting up a separate fund (≈ $20 million) of which he was director, all unbeknownst to plaintiffs. (Boone Circuit Case No. 05-CI-356). Since his resignation, our trial case, Case #90-CI-00425 has been passed to Judge Anthony W. Frolich.

b) Greg Bartlett, an attorney with Ware, Bryson, West, Bartlett, Kummer, and Knapmeyer represented us (Plaintiff) vs. Berling, when at the same time his legal firm was representing Berling in another case (Deborah Sturdivant vs. Berling, Kenton County Circuit Ct. # 90-CI-00291). Ware, Bryson, West, Bartlett, Kummer, and Knapmeyer's clients are known to be insurance companies. Greg Bartlett is now a Kenton County Circuit Judge.

c) Defendant, Berling Const., post judgment, settled a wrongful death suit in Elsbernd, et. al., vs. Berling, et. al. (Kenton County Case # 96-CI-00563). The insurance company settled at the limit of their liability coverage with Berling providing additional payment.

d) Numerous other attorneys have referenced corruption at Boone County.

e) We are aware of other plaintiffs, who have settled cases in which they were not made aware by their own representation of insurance coverage held by the defendant.

f) As one attorney, a head of a regional political party, stated to us, it is a well known and accepted practice that the same type of bond we are seeking is improperly kept from the clients by some attorneys. Thus, the circuit clerks do not provide them.

g) We are aware that our trial court witnesses were paid by Berling's legal counsel.

h) When former Judge Joseph Bamberger was presiding over our case, he at one time submitted our case to the Master Commissioner. The purpose was to eliminate the civil jury trial, while at the same time trying to sell our home back to the developer at the same cost as we paid originally. This was over our strong objection! We were advised by our attorney that the Master Commissioner had already agreed to take this case. The Master Commissioner, at that time, was Anthony Frohlich. Mr. Frohlich is now the acting Boone County Circuit Court Judge in our trial case.

i) A call from a non-local investigator, one who has investigated several other prominent and national judicial and legal corruption issues, questioned us on the details of our situation. The investigator, getting complaints through numerous other sources, indicated to us that we are not alone, and that Boone County Circuit/District Court, is known for its corruption, including issues with the county's attorneys office, DUI's, Judges, certain legal companies, and etc.

.....

CERTIFICATE OF COMPLIANCE

No.

RAYMOND & KORLISS SCHLAGEL
Petitioners

v.

BERLING DEVELOPMENT ENTERPRISES, ET AL
Respondents

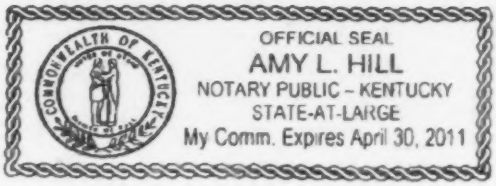
As required by Supreme Court 33.1(h), we certify that the petition for a writ of certiorari contains 1660 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

We declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept. 12, 2008

Raymond Schlagel & Korliss Schlagel

Raymond Schlagel & Korliss Schlagel-Petitioners



STATE OF KENTUCKY)
)
COUNTY OF BOONE)

Sworn to, or affirmed and subscribed in my presence this 12 day of Sept, 2008.

Amy L. Hill

Notary Public
My Commission Expires: April 30, 2011



CERTIFICATE OF SERVICE

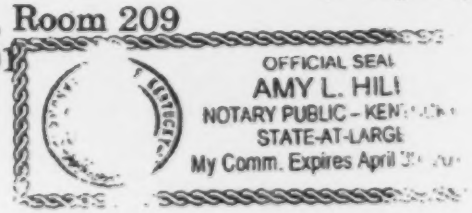
As required by Supreme Court 29.5 (c) we certify that a true and correct copy of the petition for a writ of certiorari has been served by U.S. Mail, Postage prepaid, this 12 day of September, 2008, to the following:

Stephen Wolnitzek (3 copies)
Matthew Beatty Demarcus
Wolnitzek & Rowekamp, P.S.C.
502 Greenup Street
Covington, KY 41012-0352
(859) 491- 4444
(represents: Berling Development Enterprises)

Joseph F. Bamberger (3 copies)
1598 Shady Cove
Florence, KY 41042
(859) 282 - 7288

Hon. Anthony W. Frohlich (3 copies)
Boone County Justice Center
6025 Rogers Lane, Suite 444
Burlington, KY 41005
(859) 334 – 3270

Clerk of the Supreme Court of Kentucky
State Capital (3 copies)
700 Capital Avenue, Room 209
Frankfort, KY 40601
(502) 564 – 5444



Best Available Copy

Stuart W. Cobb, Assistant Attorney General
Office of the Attorney General (3 copies)
Office of Civil and Environmental Law
700 Capitol Ave., Ste. 118
Frankfort, KY 40601
(502) 696 - 5300
(represents: Diane Murray (Prindle), Pat Gutzeit, Pat Scudder, Rose Marie Grieve and Sue Shields)

We declare under penalty of perjury that the foregoing is true and correct.

Executed on Sept. 12, 2008.

Raymond Schlagel & Korliss Schlagel

Raymond Schlagel & Korliss Schlagel-Petitioners

STATE OF KENTUCKY)
)
COUNTY OF BOONE)

Sworn to, or affirmed and subscribed in my presence this 12 day of Sept., 2008.

Notary Public
My Commission Expires: April 30, 2011

OFFICIAL SEAL
AMY L. HILL
NOTARY PUBLIC - KENTUCKY
STATE-AT-LARGE
My Comm Expires April 30, 2011